

CONTINUATION OF FIRST NOTICE OF COMMENT PERIOD

LSA Document #16-309

SHORT TERM BACKUP UNITS**PURPOSE OF NOTICE**

A First Notice of Comment Period was published on July 20, 2016, in the Indiana Register (DIN: [20160720-IR-326160309FNA](#)) for amendments to rules at [326 IAC 2-1.1-3](#) concerning the operation of short term backup units. In the First Notice of Comment Period, a section pertaining to applicable federal law to the rulemaking was inadvertently omitted. Therefore, the Indiana Department of Environmental Management (IDEM) is providing an additional 30 days for submission of comments on the rulemaking. Comments submitted to IDEM from the original First Notice of Comment Period are considered part of the formal written comment period and will be addressed with any comments received during the Continuation of First Notice comment period. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

HISTORY

First Notice of Comment Period: July 20, 2016, Indiana Register (DIN: [20160720-IR-326160309FNA](#)).

CITATIONS AFFECTED: [326 IAC 2-1.1-3](#).

AUTHORITY: [IC 13-14-8](#); [IC 13-15-2](#); [IC 13-17-3-4](#); [IC 13-17-3-11](#).

SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING**Basic Purpose and Background**

IDEM published the First Notice of Comment Period on July 20, 2016, in the Indiana Register (DIN: [20160720-IR-326160309FNA](#)) for amendments to rules at [326 IAC 2-1.1-3](#) concerning the operation of short term backup units. The provisions of [326 IAC 2-1.1-3](#) identify specific conditions under which emission units, operations, or processes are exempt from Indiana's air permitting requirements including registrations, permits, modification approvals, or operating permit revisions. When an existing permitted emission unit or its control device at a source needs to be taken offline due to either a failure or a planned maintenance event, a different emission unit or control device often needs to be inserted into the process in its place in order for the process to continue operating. The repairs to the permitted units often last longer than 30 days. The current rules do not allow an exemption for this scenario, even though the short term backup unit is often nearly identical to the unit being pulled offline for repair, and there would be no increase in emissions or decrease in control levels. Therefore, the sources that wish to use or rent a short term backup unit for this purpose must submit a request for a modification of their registration or permit and get approval prior to bringing these units onsite or operating the backup units. For the source, this can result in additional downtime, lost productivity, extra costs in seeking approval for modification of the registration or permit, and the risk of being in violation of the rule if a backup unit is used to continue operations. For IDEM, there are costs associated with reviewing registration and permit modification requests and the perception of inconsistencies in the granting of exceptions.

IDEM is proposing changes to [326 IAC 2-1.1-3](#) to allow for the use of acceptable short term backup emission units or control devices as part of normal operations to qualify as an exemption and to be used in the process while repairs or maintenance are completed to the original equipment in a reasonable amount of time, without the loss of efficiency or extra costs for IDEM or for the source. The source will still be required to comply with all existing permit terms and conditions, and IDEM will coordinate with U.S. EPA to ensure that these changes meet federal requirements.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

Alternatives to Be Considered Within the Rulemaking

IDEM published the First Notice of Comment Period on July 20, 2016, in the Indiana Register (DIN: [20160720-IR-326160309FNA](#)) for amendments to rules at [326 IAC 2-1.1-3](#) concerning the operation of short term backup units. The Alternatives to Be Considered Within the Rulemaking section was explained in detail in that document and remains unchanged, and can be found at the following link:

<http://www.in.gov/legislative/iac/20160720-IR-326160309FNA.xml.html>

Applicable Federal Law

This rulemaking requires affected sources to continue to comply with all existing permit terms and conditions, including the following applicable federal laws:

- (a) 40 CFR Part 60, New Source Performance Standards (NSPS).
- (b) 40 CFR Part 63, National Emissions Standards for Hazardous Air Pollutants (NESHAP).
- (c) 40 CFR Part 70, State Operating Permits.

Potential Fiscal Impact

IDEM published the First Notice of Comment Period on July 20, 2016, in the Indiana Register (DIN: [20160720-IR-326160309FNA](#)) for amendments to rules at [326 IAC 2-1.1-3](#) concerning the operation of short term backup units. The Potential Fiscal Impact section was explained in detail in that document and remains unchanged, and can be found at the following link:

<http://www.in.gov/legislative/iac/20160720-IR-326160309FNA.xml.html>

Small Business Assistance Information

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on CTAP and other resources available can be found at:

www.in.gov/idem/ctap

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison
IGCN 1316
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 233-0572 or (800) 988-7901
ctap@idem.in.gov

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier
Small Business Ombudsman
Indiana Economic Development Corporation
One North Capitol, Suite 700
Indianapolis, IN 46204
(317) 431-1560
kcolclazier@iedc.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Erin Moorhous
IDEM Small Business Assistance Program Ombudsman/Business, Agricultural, and Legislative Liaison
IGCN 1301
100 North Senate Avenue
Indianapolis, IN 46204-2251
(317) 232-8921 or (800) 451-6027
emoorhou@idem.in.gov

Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Jack Harmon, Rules Development Branch, Office of Legal Counsel at (317) 234-9535 or (800) 451-6027 (in Indiana).

REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-309 Short Term Backup Units
Jack Harmon
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management

Indiana Government Center North
100 North Senate Avenue
Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to jaharmon@idem.in.gov. To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than June 8, 2018. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Jack Harmon, Rules Development Branch, Office of Legal Counsel (317) 234-9535 or (800) 451-6027 (in Indiana).

Christine Pedersen, Section Chief
Rules Development Branch
Office of Legal Counsel

Posted: 05/09/2018 by Legislative Services Agency
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